

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

, ID No.

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CC:FIP:B02

PLR-151307-07

Date:

August 05, 2008

Legend:

Taxpayer =

State A =

a =

b =

Dear :

This is in reply to a letter dated November 13, 2007, and subsequent submissions, requesting a ruling on behalf of Taxpayer. Specifically, you have requested a ruling that certain income and gains from loans described below will be treated as qualifying income under section 851(b)(2) of the Internal Revenue Code.

Facts:

Taxpayer is a newly formed State A limited liability company that intends to elect to be treated as a business development company under the Investment Company Act of 1940, 15 U.S.C. 80a-1 et seq. (the "1940 Act"), for purposes of section 851(a)(1)(B). Upon its election, Taxpayer will be classified as a closed-end, non-diversified investment management company under the 1940 Act. Taxpayer represents that in connection with its election to be treated as a business development company, it will file Form 8832 to elect to be treated as a corporation for federal income tax purposes, and further that it intends to qualify as a regulated investment company (RIC) under section 851(b)(1).

Taxpayer proposes to make an initial public offering of its common stock and use the proceeds therefrom to extend funds to small and mid-sized companies that are generally engaged in the business of _____. In exchange, the small and mid-sized companies receiving the funds (“Issuers”) agree to repay the funds to Taxpayer with interest plus a “participation interest” as described below (the agreements between Taxpayer and the Issuers are hereinafter referred to as the “Loans”). The Loans may be used by the Issuers in their businesses of _____, and may also be used by the Issuers to fund management buyouts, or to fund distributions to the owners of the Issuer. Due to the credit ratings of the Issuers, it is represented that certain of the Loans may provide for a relatively high degree of risk.

The Loans will be for a stated principal amount, and will each provide for a fixed or floating rate of interest payable not less than semi-annually. Each Loan will have a term of more than a years and less than b years. Upon maturity, or upon an earlier change in control of the Issuer, the full principal amount of the Loan, together with any accrued but unpaid interest, will become immediately due and payable.

The Loans will generally be unsecured obligations of the Issuer and will not be subordinated to the claims of the Issuer’s general creditors. In certain cases, the Loans may be secured by some or all of the Issuer’s assets. The Loans generally will not be guaranteed by any person. The Loans may contain covenants that prohibit liens on the Issuer’s assets, limit the Issuer’s additional debt, or require the Issuer to maintain a minimum loan-to-value ratio. The Loans will not provide Taxpayer with any voting rights or rights to participate in the management of the Issuer.

Certain of these Loans will entitle Taxpayer to receive additional compensation in the form of a “participating interest.” Any participating interest will be based on one or more fixed percentages of the Issuer’s receipts or sales, or _____; it will not be based on the net income or net profits of the Issuer. Taxpayer, as holder of a Loan, will not be permitted to separate any right to receive a participating interest from the remainder of the Loan.

Taxpayer represents that any participating interest associated with a Loan is intended to assist Taxpayer in receiving a rate of return appropriate for the risk profile of the Loan, and mitigate an Issuer’s cash burden if its business plan is less successful than expected or if the execution of the Issuer’s business plan takes longer than expected.

Law and Analysis:

Section 851(a)(1) defines a RIC, in part, as a domestic corporation than has in effect an election under the 1940 Act to be treated as a business development company.

Under section 851(b), a RIC must satisfy certain election, gross income, and asset diversification requirements. Section 851(b)(2)(A) provides that, to qualify as a RIC, at least 90 percent of its gross income must be derived from dividends, interest, payments with respect to securities loans (as defined in section 512(a)(5)), and gains from the disposition of stock or securities (as defined in section 2(a)(36) of the 1940 Act), or foreign currencies, or other income (including but not limited to gains from options, futures, or forward contracts) derived with respect to its business of investing in such stock, securities, or currencies.

Section 2(a)(36) of the 1940 Act defines the term “security” to include any note, stock, treasury stock, security future, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing arrangement, collateral trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security (including a certificate of deposit) or on any group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest, or instrument commonly known as a “security,” or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

The Loans fall within the definition of a security under section 2(a)(36) of the Act. As such, the Loans are securities within the meaning of the term “stock or securities” under section 851(b)(2)(A). The participating interest that Taxpayer receives as part of the loan is integrated with the underlying Loan, and serves to assure Taxpayer, a business development company, of earning a return on the Loan commensurate with the Loan’s risk. The participating interest is not severable from the underlying Loan, and therefore may not be separately sold or otherwise transferred. Further, the Loans do not provide Taxpayer with any voting rights or rights to participate in the management of the Issuer.

Accordingly, based on the information submitted and representations made, we conclude that the income and gains from the Loans constitute qualifying income under section 851(b)(2).

Except as specifically ruled upon above, no opinion is expressed concerning any federal income tax consequences relating to the facts herein under any other provision of the Code. Specifically, we do not rule whether the Loans constitute debt for Federal tax purposes, or whether Taxpayer otherwise qualifies as a RIC under part I of subchapter M of Chapter 1 of the Code.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent. In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely yours,

David B. Silber

David B. Silber

Chief, Branch 2

Office of Associate Chief Counsel

(Financial Institutions & Products)